

The Constitutional Court as a negative legislator: Restriction of constitutionally guaranteed rights for the purposes of environmental protection

Abstract

This thesis examines how the Czech Constitutional Court deals with proposals to repeal laws or statutory provisions that restrict constitutional rights or other constitutional provisions concerning environmental protection. Specifically, it examines how the Court deals with conflicts between constitutional rights concerning environmental protection and other constitutional laws pertaining to the environment and/or the public interest in protecting the environment. In addition to the analysis of the decision-making practice of the Constitutional Court, the thesis deals with the anchoring of environmental protection in constitutional documents and in the Czech Constitution – both in the preambles of the Constitution and the Charter, where the environmental protection is embodied in individual rights and the state's duty to protect the environment, including those provisions where environmental or nature protection is explicitly enshrined as a possible grounds for restriction of another constitutional right.

The thesis briefly describes the role of the Constitutional Court as a negative legislator, ie its power to repeal laws or individual statutory provisions. The main content of the work is a critical reflection of individual decisions of the Constitutional Court concerning the conflict between fundamental rights and freedoms, or public interests. Therefore, the thesis firstly deals with the theoretical basis for resolving the conflict concerning constitutional rights and principles, and then analyzes the decisions of the Constitutional Court according to individual approaches to the concept of environmental protection – whether it is conceived as a part of fundamental right, public interest or public good. Pertaining to individual decisions of the Constitutional Court, the thesis analyzes its procedure in deciding on specific conflicts between rights and public interests, for which the Constitutional Court uses tests of proportionality and rationality, in most cases. Within the decision-making on environmental protection relating to public interest, the work also mentions the cause of action in the public interest and the use of this cause in the field of environmental protection. The last part of the work is devoted to the environment as a public good and the implications of its inclusion in the decision-making practice of the Constitutional Court. Towards the end of the thesis possible differences in decision-making according to the three concepts of environmental protection in individual decisions of the Constitutional Court are summarized, together with possible future developments in this area.

Key words

Public Interest; Constitutional Rights; Environmental Protection, Proportionality.